

Appl. No. : 10/790,670
Filed : March 1, 2004

REMARKS

In response to the Office Action mailed March 6, 2007, the Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following remarks.

Summary of the Office Action

In the March 6, 2007 Office Action, Claims 3 and 10 were objected to for minor informalities. Claim 3 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,290,701, issued to Enayati (hereinafter "Enayati").

Summary of the Allowable Subject Matter

In the Office Action, the Examiner allowed Claims 4-9. Further, the Examiner indicated that Claim 10 would be in condition for allowance if rewritten or amended to overcome the objection for minor informalities, set forth in the Office Action.

Summary of the Amendment

Upon entry of this amendment, Applicants will have amended Claims 3, 4, 9, and 10. In addition, Claims 27-33 have been submitted for consideration. By this amendment, the Applicants respond to the Examiner's comments and rejections made in the March 6, 2007 Office Action.

Traversal of Rejection under 35 U.S.C. § 102(b)

In the Office Action, Claim 3 was rejected under 35 U.S.C. § 102(b) as being anticipated by Enayati. Claim 3 recites, *inter alia*, that "the step of moving the outer body of the deployment tool with respect to the central body of the deployment tool comprises one way ratchet-type motion." The Examiner indicated that Enayati teaches a method of fixing a first piece of bone to a second piece of bone, and that a "one way movement is all that is apparently required by [Claim 3], not a ratchet mechanism per se." The Examiner further noted that it is his understanding that the structure of the internal lumen of the pin 170 and the cooperating structure (155) of the exterior surface of "wire" 150, for example, would allow for movement of the "wire" 150 into "pin" 170

but not in the opposite direction. As discussed below, Applicants respectfully submit that Enayati does not disclose or teach at least the above-noted features of Claim 3.

Indeed, contrary to the Examiner's suggestion, a review of Enayati indicates that the compression rivet 170 is not designed or intended to be used with the expansion pin 150 at all, much less to provide any type of one-way movement. Instead, Enayati discloses that the expansion pin 150 is intended to be used with a specially configured rivet bone fastener 120 illustrated in Figures 12-14 and the feature 155 mentioned by the Examiner is actually a breakaway joint. See Enayati, col. 6, lines 32-36, col. 5, lines 60-62; col. 6, lines 25-31; col. 7, lines 11-14. Enayati indicates that a "particularly preferred embodiment of a rivet bone fastener is indicated at 120 in FIGS. 12-14 . . . includes an expansion pin 150 (FIG. 15) housed within the axial bore which expands the legs of the rivet when rotated 90 degrees." *Id.*

The expansion pin 150 is exclusively designed to be used with the rivet bone fastener 120 due to the elliptical shape of the distal end 151 of the pin 150. See *id.* at col. 6, line 66-col. 7, line 5. The elliptical shape of the distal end 151 is shown below in Figure 16, which is a distal end view of the pin 150. The pin is also shown below in Figure 15. It should also be noted that the proximal end 152 of the pin 150 includes four flat orthogonal sides 154 that enable the user to rotate the pin 150. See *id.* at col. 6, lines 63-67. Finally, the pin also includes a circumferential breakaway joint 155. It is presumed that the breakaway joint 155 is used to break the proximal end 152 of the pin 150 away from the rest of the pin 150 in order to prevent the proximal end from 152 from protruding once the pin 150 is properly set. See *id.* at col. 5, lines 60-62 (referring to the pin embodiment 100, the extension portion 106 (i.e. proximal end) is preferably removed from the pin 100); col. 6, lines 25-31 (the extension portion 106 is preferably attached by "breakaway means to facilitate disengagement thereof").

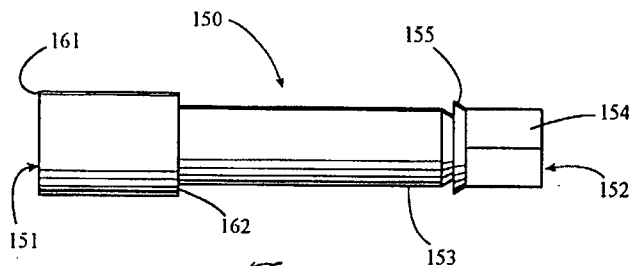


Figure 15

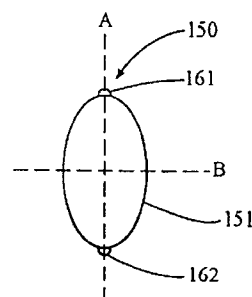
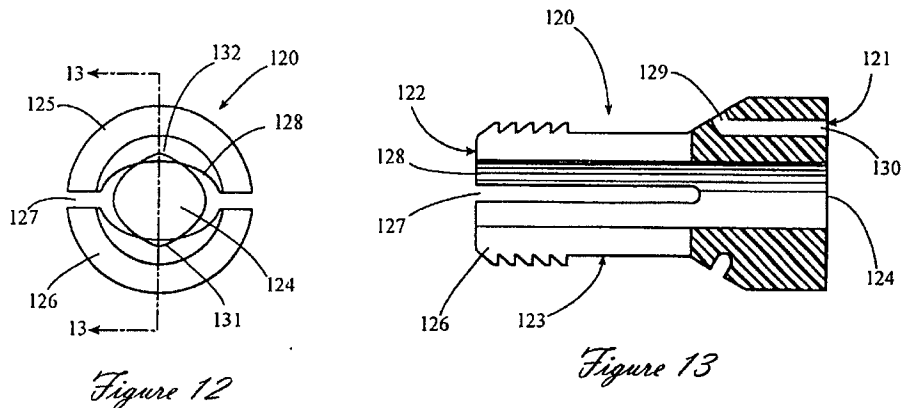


Figure 16

Furthermore, as shown below, Figure 12 is a distal end view of the rivet bone fastener 120 showing that the “distal end of the axial bore 128 has an elliptical cross-section . . . while the remainder of the axial bore 128 has a circular cross-section.” *Id.* at col. 6, lines 45-48.



In use, the elliptical distal end 151 of the pin 150 is inserted into the elliptical axial bore 128 of the rivet bone fastener 120. Once in place, the rivet bone fastener 120 can be inserted into a hole in a patient's bone. The pin 150 can then be rotated by using the flat orthogonal sides 154 of the proximal end 152 of the pin 150 to cause the major axis of the elliptically-shaped distal end 151 of the pin 150 to be aligned with the minor axis of the axial bore 124 of the rivet 120. The rotation of the pin 150 causes the expandable legs 125, 126 of the rivet bone fastener 120 to expand. *See id.* at col. 7, lines 16-30. Finally, as discussed above, the proximal end 152 of the pin 150 can be detached from the pin by snapping the pin 150 at the breakaway joint 155.

Accordingly, the pin 150 is not even intended to be used with the rivet 170, but instead, with the rivet bone fastener 120. Thus, the internal structural features of the rivet 170 are not intended to interact with the external feature 155 of the pin 150, but are instead intended to allow removal of the proximal end 152 of the pin 150. Therefore, Applicants respectfully submit that the proposed interpretation of the Enayati is improper and does not anticipate Claim 3.

Applicants also note that Enayati also discloses that rivet 170 includes a ratcheting means 176 and a ratcheting portion 178. *See id.* at col. 7, line 58-col. 8, line 31. This feature is used to allow the rivet 170 and a washer 190 to compress two bone segments 181 and 182 in juxtaposition to facilitate healing. *See id.* However, Applicants respectfully submit that this does not disclose the method recited in Claim 3 wherein “the step of moving the outer body of the deployment tool with respect to the central body of the deployment tool comprises one way ratchet-type motion” (emphasis added).

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Therefore, Applicants respectfully request the Examiner to withdraw the rejection of Claim 3 under Section 102 and indicate that Claim 3 is allowable over the art of record.

Allowed Claims 4-10

Applicants gratefully acknowledge the Examiner's indication that Claims 4-10 would be allowable if amended to overcome minor objections. Applicants have amended the claims as requested by the Examiner and submit that these claims are now in condition for allowance.

New Claims 27-33

Applicants also hereby submit new Claims 27-33 for consideration. These new claims depend from independent Claims 3 and 9, and therefore, should be allowable for at least the reason that they depend from an allowable base claim. Therefore, Applicants respectfully submit that Claims 27-33 are now in condition for allowance.

CONCLUSION

The Applicants respectfully submit that the above rejections and objections have been overcome and that the present application is now in condition for allowance. Therefore, the Applicants respectfully request that the Examiner indicate that Claims 3-10 and 27-33 are now acceptable and that Claims 3-10 and 27-33 are allowed. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Applicants respectfully submit that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected

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thereby. Applicants also have not presented arguments concerning whether the applied references can be properly combined in view of, among other things, the clearly missing elements noted above, and Applicants reserve the right to later contest whether a proper motivation and suggestion exists to combine these references.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claim and drawings in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call the Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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